consideration of its essential nature should have no bearing upon whether or not the right of removal survives.

The true foundation of this decision must be sought in the underlying justice of the case and not in the reasoning of the court. Of course the plaintiff's mortgagor never intended to give the fixtures to her landlord, and it would seldom occur to a lay mind that the taking of a new lease could have such a result. The obvious hardship of a rule which makes the lessee take out the fixtures and replace them at the beginning of each new term should be a sufficient reason for the decision in the principal case. Two jurisdictions at least have adopted this more lenient view, *Kerr* v. *Kingsbury*, 39 Mich. 150; *Second Nat. Bank* v. *Merrill*, 34 N. W. Rep. 514 (Wis.); although the weight of authority, it must be admitted, is strongly opposed. See *Watriss* v. *First Bank of Cambridge*, 124 Mass. 571. On grounds of obvious justice to the lessee it is to be hoped that the principal case will have some effect toward changing the present harsh rules on this subject.

EFFECT OF STATUTES FOR SURVIVAL OF ACTIONS ON LIABILITY FOR DEATH BY WRONGFUL ACT. — Statutes providing that personal actions shall survive the death of the party injured are frequently found side by side with statutes which allow action for wrongfully causing death. The latter class of laws — or "death acts" — are generally modelled upon Lord Campbell's Act, 9 & 10 Vict., c. 93, which provides for suit by the personal representative of the deceased for the benefit of his near relatives. Such provisions seem applicable to many cases also covered by the survival acts, and the decisions are squarely in conflict on the question of allowing recovery under both statutes for the same wrongful act. The solution of this question seems ultimately to depend on whether the death acts create an essentially new cause of action or merely apply to cases outside the scope of the survival acts and add death as a new element of damage. The cases which adopt the latter view hold that the legislature never intended to allow two actions, and evade in various ways the apparent concurrence of the remedies. Such an evasion is made in Michigan, where it has recently been held that the death acts apply only to cases where, owing to instantaneous death, no right of action ever vested in the deceased, and where, consequently, there could be no question of survival. *Dolson* v. *Lake Shore, etc., Ry. Co.*, 87 N. W. Rep. 629; *Jones* v. *McMillan*, 88 N. W. Rep. 206. To place such a restriction on the death acts, however, seems inconsistent with their broad wording and is certainly contrary to the great weight of authority. See *Com.* v. *Met. R. R. Co.*, 107 Mass. 236; TIFFANY, DEATH BY WRONGFUL ACT, § 73. Other courts make the evasion by restricting the survival acts, and hold that they apply only where the death was due to causes other than the tort sued for. *Martin* v. *M. P. Ry. Co.*, 58 Kan. 475; *Holton* v. *Daly*, 106 Ill. 131. This interpretation seems equally unwarranted by any provision of the statutes and is not generally followed. *Davis* v. *Ry.*, 53 Ark. 117; *Brown* v. *C. & N. W. Ry. Co.*, 77 N. W. Rep. 748 (Wis.).

On the other hand, the view that the death acts give a new right, thus allowing a double remedy, is supported by the weight of authority and seems preferable. *Bowes* v. *City of Boston*, 155 Mass. 344; *Needham*

v. *Grand Trunk Ry. Co.*, 38 Vt. 294. The courts which adopt it reason that, while the defendant's liability is created by only a single act on his part, yet that act is in violation of two rights, — the common law right of the deceased to personal immunity and the statutory right of his relatives to his life. The wrong in one action is the personal injury, and the statute of limitations runs from the time of such injury. The damages are for the physical suffering and the financial loss of the deceased up to and ending with the time of death. *Muldowney* v. *Ill. Cent. Ry. Co.*, 36 Ia. 462. The sum recovered becomes part of the general estate and is subject to the claims of creditors. In suits for the death, however, the wrong is causing the death, and the period of limitation, which is expressly provided by the majority of such statutes, runs from the time of death. The damages are restricted to the pecuniary loss to relatives resulting from the death, which are, of course, subsequent to it in time. *Needham* v. *Grand Trunk Ry. Co.*, *supra*; *Kelley* v. *Cent. R. R. of Ia.*, 48 Fed. Rep. 663. Though the personal representative of the deceased may be the plaintiff in both suits, still that he is regarded as acting in different capacities is shown by a decision that facts established in one action are not *res adjudicata* for the purposes of the other. *Leggott* v. *Great Northern Ry.*, L. R. 1 Q. B. D. 599. The recovery in the action for death is solely for the benefit of relatives, and creditors of the deceased have no rights in the sum recovered. *Cf. Gores* v. *Graff*, 77 Wis. 174. If the double remedy is allowed, therefore, both the creditors and the relatives are compensated, whereas the contrary view must regard one or the other as having sustained *damnum absque injuria*, — a result certainly not in keeping with the purpose of this legislation. See 9 & 10 VICT., c. 93.

It is true that since the view advocated involves the doctrine that recovery by the administrator for the personal injury is no bar to an action for the death itself, it is not entirely consistent to hold that if the deceased had before his death recovered for this same personal injury, no subsequent proceedings for the death could be maintained. The latter position, however, is necessary, inasmuch as the usual death act requires that the deceased in such a case be "entitled to maintain an action," at the time of death. *Read* v. *Grt. East. Ry.*, L. R. 3 Q. B. 555. But this inconsistency does not seem to be an objection of decisive weight, as it is due merely to an inadequate wording of the statute. See 28 AM. LAW REG., N. S., 385, 513, 577.

RECENT CASES.

BANKRUPTCY — ACTS OF BANKRUPTCY — PRESUMPTION OF INTENT TO PREFER. — The defendant was alleged to have committed an act of bankruptcy, under § 3, *a*, (2), of the Bankruptcy Act, by having transferred, while insolvent, a portion of his property to certain creditors "with intent to prefer such creditors." *Held*, that, the fact of insolvency at the time of the transfer being doubtful, the intent to prefer will not be presumed. *In re Gilbert*, 112 Fed. Rep. 951 (Dist. Ct., Or.).

The United States courts have always held that where a debtor, knowing his insolvency, transfers property to certain of his creditors, an intent to prefer them will be conclusively presumed. And they have laid down a further rebuttable presumption, where the fact of insolvency is clear, that the debtor had knowledge of his financial condition. *Toof* v. *Martin*, 13 Wall. (U. S. Sup. Ct.) 40; *cf. Mundo* v.